

Exh. H

Roberto Lange

From: Roberto Lange
Sent: Thursday, April 1, 2021 2:07 PM
To: SDDml_All District Court; SDPml_ALL Probation
Subject: Update on COVID vaccine expectation and policy

I wish you each a good and blessed Easter weekend. This email is long, but contains important information for each of you.

Two weeks ago, I sent an email to make clear that we expect each of you to get vaccinated against COVID-19, to provide the website of providers with hyperlinks for you to schedule your vaccines, and to dispel some notions of vaccine hesitancy. A copy of that email is below, including the links to South Dakota vaccine providers and the Johns Hopkins University and Medical Center "myth versus facts" site dispelling other disinformation.

Yesterday, Judge Kornmann released to me and others a Memorandum, stating that those employed at the Aberdeen courthouse are expected to advise in writing if they have been or are scheduled to be vaccinated and contemplating the "vaccine passport" (the document receive by those of us who are vaccinated) potentially be shown for entry into the Aberdeen courthouse. I have been asked now several times if this will become district-wide policy and wanted to respond to all of you with the same information.

First, nothing in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) bars federal judges or the federal judiciary from learning which employees are and are not vaccinated. We researched HIPAA before we modified our juror questionnaire to ask if potential jurors have been or are scheduled to be vaccinated. We have a right, and indeed in my view an obligation in assuring the safety of the workplace, to find out who has and has not been vaccinated. All of the district judges have discussed and agreed that we will have to know who has and has not been vaccinated to decide how we are going to conduct court operations going forward.

Second, we have discussed a date by which we expect all employees to be vaccinated and likely end teleworking arrangements. That date probably will be June 1, 2021. That will allow ample time for all to get vaccinated and indeed for any with vaccine hesitancy to observe that the vaccines are indeed safe and effective. For those with vaccine hesitancy, I implore you to talk with your physician or medical provider. I would make myself personally available as well to discuss and address concerns; I surely would like to know if I have overlooked a particular grounds for vaccine hesitancy in sending the Johns Hopkins information and in my prior email. For those with vaccine hesitancy, please know that vaccines have solved polio, rubella, tetanus, measles, rabies, whooping cough, mumps, chickenpox, diphtheria, etc. You likely have had your children vaccinated to enter school, and your pets vaccinated for their well-being. A miniscule percentage of people with anaphylaxis are excused from being vaccinated for COVID-19, and we will accommodate any such employee in the unlikely event that we have one. Although I do not expect any of you to be so calculating, no one should expect that they can refuse to get vaccinated and thereby continue teleworking; that will not occur.

Third, if any of you labor under such extreme views that the federal government is implanting a chip through this vaccine, then you should not work for the federal judiciary and need to find work elsewhere. I truly hope that none of you are so prideful and stubborn that this email steels your resolve not to be vaccinated. But if

that is the case, then you have some soul searching to do this Easter season about whether you belong in a team setting such as we have here.

Fourth, I do not know whether the so-called "vaccine passport" will become a requisite for airline travel or entry into federal buildings or the like. Whether there will be such a requirement in the District of South Dakota has not been discussed or decided, and will not exist until at the very earliest June 1. There would be issues to work through with material witnesses, jurors, and defendants, if such a requirement were adopted.

I want to close with a bit of a personal reflection, now that we are a year into the pandemic. My goal has been to keep all of you and those who come into contact with the court as safe as possible, while continuing to provide necessary functioning of the federal court system in South Dakota. We will likely have very busy months ahead to catch up on trials and to resume normal supervision of those on release conditions. In the past twelve months, 552,000 Americans—1,935 of which were South Dakotans—have died of COVID-19 related illness. Put another way, one out of every 450 South Dakotans has died of COVID in the past year. We have lost no one, and to my knowledge no one has contracted the disease as a result of court operations; mask wearing, physical distancing and other precautions work to reduce the spread. But the disease is fickle. As I write this, my best friend Jeff, a physically active non-smoker in his early 50s with whom I ran multiple marathons, has COVID-19 and lies in the Intensive Care Unit of Avera McKennan on oxygen with a blood clot in his lung. His wife is grief stricken suspecting that she transmitted the disease to him, notwithstanding that both of them were diligent about mask wearing and distancing but ineligible for vaccination until this coming Monday. This has been an extremely difficult past twelve months, but the COVID-19 vaccines give us a way out of the pandemic and a path forward as a society. My responsibility—indeed our shared responsibility—is to operate a court system that functions justly, safely, and properly. To do so, we need to avoid courthouse shutdowns because someone inside the courthouse contracted the virus and generally to avoid the possibility that a person contracts or transmits the virus as we perform essential functions. The vaccines reduce that possibility by 90% or more. During our last monthly district judges call, the reaction to my prior email was twofold: 1) support for what I had written previously, though some would have had it be even more direct; and 2) utter disbelief that we could have any employee refuse to be vaccinated. I do not look forward to the difficult conversations that lie ahead with my fellow judges and the court unit executives about what we are going to do about any employee who refuses to be vaccinated. Let's all get vaccinated as soon as possible so that we can all move forward as a team and without this being an issue.

From: Roberto Lange <Roberto_Lange@sdd.uscourts.gov>

Sent: Friday, March 19, 2021 10:33 AM

To: SDDml_All District Court <SDDml_All_District_Court@sdd.uscourts.gov>; SDPml_ALL Probation <SDPml_ALL_Probation@sdp.uscourts.gov>

Subject: COVID-19 Vaccine

I am pleased to report that beginning this Monday, March 22, 2021, all of us are eligible to be vaccinated in South Dakota. We qualify both as "legal" and as "critical infrastructure" in Group 1E. Many of you who work as probation officers already have been vaccinated as a part of "law enforcement." Now is the time for the rest of us to get vaccinated.

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